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C O N F I D E N T I A L SECTION 01 OF 04 BOGOTA 004214

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E.O. 12958: DECL: 04/01/2014

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SUBJECT: COLOMBIA'S DEBATE OVER MASS DETENTIONS

Classified By: Ambassador William B. Wood for reasons 1.4 (b) and (d).

Summary

1. (C) Some human rights NGOs oppose the GOC's policy of large-scale detentions. The GOC, however, insists that such detentions are consistent with legal norms and points out that between 60 and 70 percent of persons arrested in such operations remain in custody based on judicially-sanctioned orders for investigative detention. The government's Office of the Inspector General ("Procuraduria") has identified irregularities in some mass detentions, but claims it has successfully intervened to solve these problems without opposition from other GOC entities. Partly because the GOC has shown that the state can effectively police itself in these cases, a senior ICRC official in Colombia (strictly protect) told the Embassy he believes the GOC's use of large-scale detentions are not arbitrary. Several case studies reveal that despite the legal complexities of detentions, their imperfect results, and the adverse publicity they often generate, they are one of the most effective tools the GOC has to isolate and incapacitate paramilitary and guerrilla terrorists. End Summary.

The Debate over Mass Detentions

2. (U) The GOC's "Democratic Security Policy" and its use of large-scale detentions to ferret out terrorists operating clandestinely among the civilian population have come under heavy criticism from political opponents and human rights groups. President Alvaro Uribe has stood by the practice, stating during his recent trip to Europe that large-scale detentions are a key component of the GOC's "strategy for isolating terrorists, with the aim of condemning them to live in woodland hideouts, feeding on roots."

3. (U) Some Colombian NGOs have linked the practice to other GOC security initiatives such as the hometown soldier program ("soldados campesinos") and the informants network that they allege improperly involve civilians in the internal armed conflict. They also accuse the Government of using mass detentions to punish the political opposition, and claim that detainees subsequently face higher risks of violence for allegedly being terrorist -- or government -- collaborators. On February 18, a group of Colombian NGOs issued a report that claimed that 90 percent of mass detentions were arbitrary. According to the Committee in Solidarity with Political Prisoners (CSPP), which focuses on the rights and treatment of persons detained for politically motivated crimes, particularly rebellion and subversion, 4,846 people accused of collaborating with guerrillas were detained in large-scale detentions in 2003. The CSPP characterized 3,939 of these detentions as "arbitrary" and claimed that 3,750 of these detainees were released for lack of evidence. The NGO report also criticized the use of information received from confidential informants to justify the detentions.

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4. (U) GOC numbers for large-scale detentions are significantly lower than CSPP estimates, largely because of the time differences (hours vs. days for example) in how a "detention" is defined. However, GOC numbers themselves confirm NGO claims that many persons arrested in mass detentions were soon released. According to the Prosecutor General's Office ("Fiscalia"), of 1,264 persons arrested in 31 mass detentions, 414 have been released. NGOs cite this fact as additional evidence that the detentions were arbitrary. However, according to the Fiscalía, the arrests were the result of careful planning that targeted specific individuals. The Fiscalía continues to gather evidence against the 850 persons arrested in these detentions who remain in custody, but only 53 of whom have been formally indicted.

Mass Detentions and the Colombian Judicial System

15. (U) According to a 1994 Constitutional Court ruling, non-judicial authorities are permitted to "materially apprehend a person under certain circumstances and with certain formalities, without first obtaining a judicial order." The ruling states that such detentions must be based on reasonable evidence, warranted by exigent circumstances, limited in time and scope, consistent with principles of fairness and equality, and subject to habeas corpus. The recently approved anti-terrorism statute, which has yet to face Constitutional Court scrutiny, permits members of the security forces to make provisional arrests, with or without prior judicial approval, in cases related to terrorism.

16. (U) In Colombia, anyone detained by government authorities must be brought before a senior prosecutor within 36 hours of his or her detention. The hearing must take place in the presence of the detainee's attorney or a court-appointed public defender. The senior prosecutor is required to rule on the legality of the detention within an additional 36 hours and decide whether the case merits formal investigation. If an investigation is warranted, the case is assigned to a different prosecutor and a formal investigation begins. Otherwise, the detainee is released.

17. (U) Colombia's legal system divides judicial proceedings into various stages, each of which should be completed within a limited period of time, which varies according to the alleged crime and the number of persons under investigation. If a formal investigation is not completed within the prescribed time limit, a suspect must be released. Upon completion of the investigative stage, in which prosecutors, police, the Inspector General's Office ("Procuraduria"), and the defense all have a say, the prosecutor assigned to the case decides whether it should go to trial. Trial consists of two phases: 1) presentation of evidence by all parties; and 2) verdict and sentencing. Both of these phases must also be completed within prescribed time limits.

ICRC: GOC Complying with Human Rights Norms

18. (C) According to Max Furrer (strictly protect), Protection Coordinator for the Colombia office of the International Committee of the Red Cross (ICRC), although arrests have occurred on a large scale, the ICRC does not consider them arbitrary. According to the ICRC's understanding of international humanitarian law (IHL), an arbitrary detention occurs when there is no arrest warrant or right to habeas corpus. However, Furrer said, most persons arrested during these detentions had outstanding arrest warrants, while others were held based on evidence gathered at the scene or shortly thereafter. Persons against whom credible evidence could not be found were released within a reasonable time. Furrer recognized that targeted groups operate clandestinely within the civilian population in areas where the government is trying to re-assert state control.

19. (C) Furrer said government authorities in any country have a right to ask for a person's identification and even detain persons temporarily if they suspect they are involved in criminal activities. If innocent detainees are released within a reasonable period of time, due process has been respected and detentions should not be considered arbitrary.

110. (C) From Furrer's perspective, mistreatment of detainees has not increased as a result of mass detentions. Furrer said that mistreatment of prisoners and detainees in Colombia was not systemic or gross, but rather the result of occasional heavy-handedness by police, soldiers, and prison guards. Furrer also said the GOC does not carry out large-scale detentions to target organizations or individuals for political reasons.

Inspector General Remedying Irregularities

111. (U) Colombian Inspector General ("Procurador General") Edgardo Maya acknowledged in a public report that the security forces have made mistakes during large-scale detentions, primarily related to an absence of arrest warrants and other violations of judicial guarantees. For example, following Operation "Cafe," conducted in October 2003 in the towns of Anserma and Riosucio, Caldas department, the Inspector General's Office requested and obtained the release of 51 of 95 detainees because no arrest warrants had been prepared against them. According to the Inspector General's Office, 754 of 1,957 persons detained for the crimes of rebellion, conspiracy, and/or narcotics trafficking between January 2003 and February 2004, or 38 percent of all detainees, were released because of procedural irregularities. The Inspector General said, however, that his office has successfully intervened to protect citizens' rights in all cases in which such irregularities have arisen, without opposition from other government entities.

Case Studies

112. (U) Several examples can help clarify the nature of mass detentions and the circumstances under which they occur.

Cartagena del Chaira, Caqueta Department

113. (U) On September 6, 2003, soldiers and police surrounded the town of Cartagena del Chaira, Caqueta department, and "rounded up" nearly 600 people. Residents complained that the operation was indiscriminate and that police arrived with incomplete search and arrest warrants that they filled in during the day based on evidence from unidentified confidential informants. However, according to the Fiscalía,

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prosecutors had 95 completed arrest warrants, 74 of which were successfully executed against alleged members of the Revolutionary Armed Forces of Colombia (FARC). Edelberto Diaz, former director of the Department of Administrative Security (DAS) in Caqueta department and current assistant director of investigations in Bogota defended the detentions, emphasizing that all detainees were formally processed at the prosecutors' office and all those ultimately arrested had outstanding warrants. He said the town's residents were temporarily detained both for security reasons and to verify their identities.

114. (U) On September 29, the Fiscalía issued investigative detention orders ("medidas de aseguramiento") against 67 detainees for the crime of rebellion and released seven others. On December 23, the Fiscalía issued investigative detention orders against 12 other town residents with outstanding arrest warrants who were not detained during the September 6 operation. Outstanding arrest warrants against another nine suspects not found that day were rescinded. On January 11, twelve detainees were released based on exculpatory evidence. As of March 15, the rest of the original detainees remained in the custody of the Fiscalía.

Saravena, Arauca Department

115. (U) On November 12, 2002, GOC authorities, including representatives of the local human rights unit of the Fiscalía and members of the Colombian National Police (CNP), Colombian Army Special Forces, and the Colombian Army's Third Mobile Brigade, detained 85 persons in a series of coordinated raids in the town of Saravena, Arauca department. Detainees were temporarily held in a soccer stadium while authorities confirmed their identities. The Fiscalía says detainees were held in the stadium because officials could not process them safely on city streets. Saravena, one of Colombia's most violent cities, is home to many FARC and National Liberation Army (ELN) sympathizers and clandestine operatives. Civilian prosecutors throughout Arauca, including Saravena, live and work on military bases for their own protection and do not leave them without protective details. Ten detainees were confirmed to have outstanding arrest warrants for alleged membership in the FARC's 10th Front and 33 others were linked to ELN urban units. The following week, 43 detainees were transferred to Bogota for investigation by the Fiscalía's Anti-Terrorism Unit. All other detainees were released.

116. (U) Prosecutors indicted 37 detainees, but because all were charged with rebellion -- a crime normally heard in a lower court (cases such as terrorism and narcotics trafficking are heard in higher courts located in department capitals and Bogota) -- the cases were assigned to a local judge in Saravena. In November 2003, the Fiscalía convinced the Colombian Supreme Court to return the case to Bogota because the presiding judge in Saravena could face undue pressure from local guerrillas. However, delays caused by Arauca judicial authorities forced the newly-assigned presiding judge in Bogota to order the release of all 37 prisoners in early February because the prescribed time limit for that stage of the judicial process had elapsed. Although the case continues, all the accused have disappeared and it is unlikely authorities will re-arrest many of these fugitives in the foreseeable future. The Inspector General's Office is investigating events that led to the prisoners' release.

Cucuta, Norte de Santander Department

117. (U) From December 9-13, 2003, prosecutors from the Fiscalía's national Human Rights Unit in Bogota, supported by

elements of the CNP and the Fiscalia's Corps of Technical Investigators (CTI), executed 30 arrest warrants against paramilitaries in Cucuta, Norte de Santander department, suspected of scores of murders and other human rights violations, including the May 2003 disappearance of a CTI investigator and the October 2003 murder of the husband of the Fiscalia's departmental director. The Fiscalia ordered the investigative detention of 25 of the detainees after releasing five others for lack of evidence. Seven other presumed paramilitaries were subsequently arrested based on testimony from cooperative detainees. All 32 suspects remain in custody pending completion of investigations against them.

Comment: Detentions Large-Scale, but not Arbitrary

18. (C) The GOC's policy of so-called "mass detentions," although controversial and imperfect, has captured hundreds of FARC, ELN and paramilitary terrorists and support personnel. Although irregularities have occurred during large-scale judicial operations, the government, through the Office of the Inspector General, has worked to police itself. But far too many prisoners remain in custody without adequate, timely resolution of their cases. We will continue to urge the GOC to better target arrests on the one hand, and to move them more rapidly through the judicial process on the other.

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